IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 2825 OF 2004

DNYANESHWAR VALLABHA KATEKAR & ORS. ..PETITIONERS

Vs.

VITHAL VYANKATESH KURULKAR Since deceased

by Lrs. Smt. Vaishali V. Kurulkar & Ors. ..RESPONDENTS

Mr. S. S. Patwardhan for petitioners

Mr.P. K. Dhakephalkar i/b M.A. Utgikar for R-7.

CORAM:-Smt. Ranjana Desai, J.

DATED:- 10-1-2005

P. C.

This is a writ petition filed by the original plaintiffs who claim to be the sons of the original tenant. It appears that deceased Madhav Ramchandra Kurulkar was the owner of the suit premises and he had filed

R.C.S. No. 66 of 1976 against the father of the plaintiffs for possession of suit premises on the ground that the tenant had committed default in payment of rent and also on the ground that the suit premises were required bonafide for personal use and occupation. In that suit the parties arrived at a compromise. The suit ended in a compromise decree on 1-5-1980.

2. The plaintiffs filed a suit for a declaration that they have every right to enjoy the suit premises as tenants and that the consent decree passed in R.C.S. No. 66 of 1976 is not binding on them. It is the case of the plaintiffs that the compromise decre passed in R.C.S. No. 66 of 1976 is not executable as it was passed without there being any ground for eviction under Sections 12 and 13 of the Bombay Rent Act. The trial court dismissed the suit. The appeal carried therefrom was also dismissed and hence this writ petition.

3. I have heard at some length, the learned counsel for the petitioner who contended that the order passed by the court recording the compromise decree does not indicate that the court had applied its mind to the question whether any ground under the Bombay Rent Act is made out against the tenant. Relying on the decision of the Supreme Court in **Ferozi Lal's case (supra)** the learned counsel contended that, therefore,

the said compromise decree is not executable and is not binding on the plaintiffs. He also submitted that after the death of the tenant the plaintiffs being his sons have become the tenants of the suit premises under Section 5(11) (c) of the Bombay Rent Act.

4. I am unable to appreciate the submissions of the learned counsel. It is evident from the terms of compromise that there was existence of statutory ground for eviction under the Bombay Rent Act. It is not necessary that the court passing the decree in terms of compromise should say so in specific terms.

5. In **Ferozi Lal's case (supra)** the appellant was the owner of shop premises. He had leased the shop premises to the 1st respondent. One of the terms of the lease was that the 1st respondent should not sublet the shop. On the allegation that the 1st respondent had sublet the shop to the 2nd respondent, the appellant brought a suit for eviction of the respondents under Section 13 of the Delhi and Ajmer Rent Control Act, 1952. The respondents denied the sublease alleged by the appellant. Their case was that the 2nd respondent was the partner of the 1st respondent. During the pendency of the trial of the suit, the appellant and the 1st respondent entered into a compromise on the basis of which a compromise decree

was passed by the Court. Compromise petition did not make any reference to the alleged sublease. The appellant attempted to execute the decree. The 2nd respondent resisted the execution on the ground that the decree was a nullity as it was not passed on any of the grounds which were available under the Delhi and Ajmer Rent Control Act, 1952. The Supreme Court observed that the jurisdiction of the court to pass a decree for recovery of possession of any premises depends upon its satisfaction that one or more of the ground mentioned under Section 13 (1) have been proved. It was observed in the facts of that case that at no stage the court was called upon to apply its mind to the question whether the alleged sub-letting was true or not. The Supreme Court further observed that order made by the court did not show that it was satisfied that the sub-letting complained of had taken place nor was there any other material on record to show that it was so satisfied. It was further observed that it was clear from the record that the court had proceeded solely on the basis of the compromise arrived at between the parties. It is against this background that the Supreme Court has held that the decree under execution is held to be nullity.

6. In my opinion, this judgment is not applicable to the facts of the present case. In the present case by the said compromise the tenant had

agreed to pay the time barred arrrears of rent. This is evident from the terms of the compromise. It is also stated therein that only because of scarcity of residential accommodations at Pandharpur, the tenant was permitted to occupy suit premises till 31-12-1984. It is further provided that if the tenant failed to deliver possession of the suit premises at the end of concession given to him then the landlord shall be entitled to recover the possession through court. All these terms clearly indicate that the tenant was a defaulter and therefore, ground under Section 12 of the Rent Act was made out against him. It cannot be said, therefore, that the court could not have been satisfied about the exisistence of statutory ground for eviction under the Rent Act. In the case before the Supreme Court in **Ferozi Lal's case (supra)** the compromise petition did not make even a reference to the alleged sublease. The Supreme Court observed that apart from the fact that the record did not show that the court was satisfied that the subletting had taken place, there was no other material on record to show that it was so satisfied.

In the instant case the terms of the compromise itself make it evident that the ground for eviction under the Bombay Rent Act was available and made out against the tenant. Therefore, it cannot be urged that the compromise decree in the instant case is not executable. The petitioners also cannot get the benefit of Section 5 (11) (c) of the Bombay Rent Act, because the relationship between the tenant and the landlord had come to an end on the

date of compromise and the tenant died during the concessional period of five years mentioned in the compromise deed.

7. In view of the above, there is no substance in the petition. The petition is rejected.

.....